IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.5062 OF 2002

Laxmibai Narsinha Thosar ...Petitioner
Vs.
Lilabai Vinayak Phadke & Anr. ...Respondents

Shri G.V. Nagarsheth for the Petitioner.
Shri S.R. Bhalekar for the Respondent No.1.

CORAM : A.S.OKA, J.
DATE : JANUARY 27, 2006.

P.C.:

1. This Petition under Article 227 of the Constitution of India is filed by the original Defendant No.1. In a suit filed by the Respondent No.1, the Trial Court has granted declaration of tenancy in respect of the premises specified in clause No.1 of the operative part of the judgment. There was a cross suit filed by the Petitioner against the Respondents praying for possession on the ground that the husband of the Respondent No.1 was the gratuitous licensee. The suit filed by the Petitioner was dismissed by the Trial Court. Against both the decrees, separate appeals were preferred by the Petitioner and by a common judgment both the appeals have been dismissed.

2. After having heard the Advocates appearing for the parties I am satisfied that there is no perversity in the impugned judgments and orders. After

considering the evidence on record, the courts have recorded a finding that the Respondent No.1 has established the plea of tenancy. The Apex Court held that entries in the diary maintained by deceased Vinayak have been proved by examining Vasant. The decision of the Apex Court reported in AIR 2000 Supreme Court Page 426 (Ishwar Dass Jain (dead) through L.Rs. vs. Sohan Lal (dead) by L.Rs.) relied upon by the Advocate for the Petitioner is not applicable as admittedly, in the present case, the original diary was produced. After considering the evidence of diary, the evidence of adjoining owner Ramchandra Paranjpe and other material on record findings of fact have been recorded by the Courts below and there is no perversity or illegality in the findings. No interference is called for. Petition is rejected.

JUDGE